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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

12 CR 934 (RA)

5 FENG LING LIU, et al.,

6 Defendants.

7 -----x

8 New York, N.Y.
9 January 3, 2013
4:00 p.m.

10 Before:

11 HON. RONNIE ABRAMS,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 HARRIS FISCHMAN

ROBERT BOONE

18 Assistant United States Attorneys

19 SEAN MAHER

20 Attorney for Defendant Vanessa Bandrich

21 ZUCHERMAN SPAEDER

Attorneys for Defendant Feng Ling Liu

22 JAMES SOTTILE

23 LAW OFFICES OF RAYMOND H. WONG

Attorneys for Defendant Feng Li

24 JAMES SCHMITZ

-and-

25 WILLKIE FARR & GALLAGHER

Attorneys for Defendant Feng Li

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1 MICHAEL S. SCHACHTER

2 Appearances (Continued)

3 STUART D. RUBIN

Attorney for Defendant Shuran Liu

5 CHARLES S. HOCHBAUM

Attorney for Defendant Yuchang Miao

7 STANISLAO A. GERMAN

Attorney for Defendant Sunny Yang

9 DONALD DUBOULAY

Attorney for Defendant Guo Qin Miao

11 PEI PEI CHENG

Attorney for Defendant Wen Tong Zheng

13 JOSHUA DRATEL

Attorney for Defendant Shu Feng Xia

15 ALSO PRESENT: Mandarin Interpreters Laura Chen and Brenda Chen

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(In open court)

THE DEPUTY CLERK: In the matter of The United States of America v. Feng Ling Liu, et al. docket number 12 CR 934. Counsel, please state your name.

MR. FISCHMAN: Harris Fischman and Robert Boone joined by Chris DeGraff of the FBI.

THE COURT: Good afternoon.

MR. DRATEL: Joshua Dratel. In the indictment it's Kevin LNU, he's last on the indictment. His true name is S-H-U, new word F-E-N-G, last name X-I-A. And I understand, I've talked to the government, they are going to supersede and get the right name on the indictment.

THE COURT: Thank you, good afternoon.

MR. SOTTILE: James Sottile of Zucherman Spaeder. My partner Paul Schectman and I are appearing for Feng Ling Liu.

THE COURT: Good afternoon.

MR. DUBOULAY: Donald Duboulay appearing for Paul McCallister who is ill, he's hospitalized. I'm standing in for him today. His client's name is Guo Qin Miao. I've consulted with her and it's okay with her.

MR. MAHER: Sean Maher for Vanessa Bandrich who is here in the first row.

MR. GERMAN: Stan German on behalf of Sunny Yang, seated in the first row.

MR. RUBIN: Stuart Rubin on behalf of Shuran Liu.

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1 Mr. Liu is fourth from the Court's left.

2 MR. HOCHBAUM: Charles Hochbaum for Yuchang Miao.

3 MS. CHENG: Good afternoon, your Honor. Pei Pei
4 Cheng. I represent Wen Tong Zheng. I'm actually standing here
5 on behalf of David Touger who is at a sentencing before Judge
6 Seibel in White Plains.

7 MR. SCHMITZ: On behalf of Mr. Feng Li, third in the
8 indictment, he is also third from your Honor's left in the
9 first row, I'm James Schmitz from the law firm of Wong, Wong &
10 Associates.

11 THE COURT: Good afternoon.

12 MR. DRATEL: Just I neglected to say Mr. Xia is here
13 in the first row to your right.

14 THE COURT: Can I confirm that all of the defendants
15 are here?

16 MR. HOCHBAUM: Yes, your Honor.

17 THE COURT: Thank you, and good afternoon to all the
18 defendants as well.

19 Swear in the Mandarin interpreter, please.

20 (Interpreters sworn)

21 THE COURT: Ms. Chen, is that correct? The
22 interpreter's name is Ms. Chen.

23 INTERPRETER L. CHEN: I'm Laura Chen.

24 INTERPRETER B. CHEN: And Brenda Chen.

25 THE COURT: Good afternoon. I just like to ask a few

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1 questions about your qualifications. When did you learn
2 Mandarin?

3 INTERPRETER L. CHEN: I learned Mandarin as a child.
4 I was born in China.

5 THE COURT: Are you interpreting as well?

6 INTERPRETER B. CHEN: Yes, your Honor.

7 THE COURT: When did you learn Mandarin?

8 INTERPRETER B. CHEN: When I was born.

9 THE COURT: When did you both learn English?

10 INTERPRETER L. CHEN: I started studying English when
11 I was in China when I was 11, and I moved to the U.S. when I
12 was 13 years old.

13 THE COURT: You've been speaking English since then?

14 INTERPRETER L. CHEN: Yes.

15 INTERPRETER B. CHEN: I learned English when I was in
16 elementary school in China, when I came here in junior high
17 school and high school and through college I learned English.

18 THE COURT: How long have you both been providing
19 Mandarin and English translations in criminal matters in
20 federal court?

21 INTERPRETER L. CHEN: I have been providing Mandarin
22 translation since 2001 in federal court here in the Southern
23 District.

24 THE COURT: Thank you.

25 INTERPRETER B. CHEN: I started since 2004.

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1 THE COURT: Okay. Thank you to both Ms. Chens and you
2 may be seated and proceed.

3 I'd like to confirm that all of the defendants have
4 been arraigned. Is that correct?

5 MR. FISCHMAN: That's correct, your Honor.

6 THE COURT: I want to talk about some counsel issues
7 and then we can get to scheduling and discovery.

8 I received a letter from Mr. Schmitz of Wong, Wong &
9 Associates, and I understand you are seeking to be relieved as
10 counsel. Is that correct?

11 MR. SCHMITZ: That's correct, your Honor.

12 THE COURT: Mr. Li, does Mr. Li consent to
13 substitution of counsel in this case? Can Mr. Li please stand?

14 DEFENDANT LI: Yes, your Honor.

15 THE COURT: You do consent to substitution of counsel?

16 DEFENDANT LI: Yes.

17 THE COURT: Thank you. I have a financial affidavit
18 that you signed before me. Is this your signature?

19 DEFENDANT LI: It is, yes.

20 THE COURT: Do you swear that the information
21 contained in this financial affidavit is true, so help you God?

22 DEFENDANT LI: I do, your Honor.

23 THE COURT: You may be seated. On the basis of this
24 affidavit I find that Mr. Li cannot afford counsel and I
25 appoint Michael Schachter of the CJA panel who is here today to

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1 represent him. Can Mr. Schachter please come up.

2 I should note for the record that Mr. Schachter and I
3 worked together at the U.S. attorney's office. He's an
4 excellent attorney. So what I'm going to do is have
5 Mr. Schachter represent you, Mr. Li, going forward. Do you
6 consent to that?

7 DEFENDANT LI: Yes, your Honor.

8 THE COURT: Okay. As a result of that, I'm going to
9 relieve Mr. Schmitz and I would ask Mr. Schmitz that you
10 provide anything you have on this case to Mr. Schachter.

11 MR. SCHMITZ: Of course, your Honor. I intend to in
12 30 seconds.

13 THE COURT: Is there any reason that Mr. Schachter
14 cannot be appointed in this case? I'm asking Mr. Fischman.

15 MR. FISCHMAN: Your Honor, I don't think there is a
16 bar to his appointment at all. It is our understanding at
17 3 p.m. Judge Stein appointed him to represent a defendant Xia
18 Ping Wen in one of the related cases.

19 THE COURT: Okay.

20 MR. FISCHMAN: Having been in that courtroom, I don't
21 believe Mr. Schachter has had any interaction with Ms. Wen
22 whatsoever, so I don't think the fact of his appointment should
23 be a bar in a conflict sense. Just it probably wouldn't be
24 appropriate for him to represent both clients.

25 THE COURT: Mr. Schachter, have you met with Mr. Li?

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1 MR. SCHACHTER: Yes, I have, your Honor, briefly.

2 THE COURT: Briefly. And have you met with the
3 defendant in Judge Stein's case?

4 MR. SCHACHTER: No, I have not. Nor was I even aware
5 of the appointment until just a few minutes ago from AUSA
6 Fischman.

7 THE COURT: I'll appoint you counsel for Mr. Li in
8 this case, and I'll reach out to Judge Stein to let him know.
9 It seems more efficient since he's already spoken to Mr. Li and
10 has not yet met the defendant in that case.

11 MR. FISCHMAN: The government agrees.

12 THE COURT: Mr. Schachter, you may be seated.
13 Welcome.

14 I understand there was one more issue regarding a
15 possible substitution of counsel, is that correct?

16 MR. RUBIN: Yes. On behalf of Shuran Lui, I was
17 informed last night that Mr. Lui would like to retain new
18 counsel. I filed my notice on the 26th, so it's been short and
19 sweet. But there is nobody at this point to substitute, and
20 there has previously been a financial affidavit submitted to
21 the Court. Mr. Goltzer was appointed just for the limited
22 purpose of arraignment at that time. I haven't seen the
23 affidavit. My sense is from that ruling that the Court found
24 him financially responsible enough to hire counsel, is what my
25 sense of it is.

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1 THE COURT: Do you have a sense of how long it would
2 take your client to get new counsel?

3 MR. RUBIN: I do not, your Honor. I've had a very
4 cordial conversation today, so I'm not quite sure what the
5 issue is, but that's the status. Maybe we can communicate with
6 the Court by letter or request for a separate status conference
7 just for that limited purpose.

8 THE COURT: That would be acceptable, and I would like
9 you to stay in the case for the time being and I'd like to
10 advise your client. Can you have your client stand, please.

11 Mr. Liu, I am going to keep your attorney Mr. Rubin in
12 the case for now. If you do intend to hire another attorney,
13 I'd ask you to do so as soon as possible so that attorney can
14 get up to speed and we can all stay on the same schedule.

15 DEFENDANT LIU: Okay, I will.

16 THE COURT: Thank you very much. Any other counsel
17 issues or can we proceed to scheduling discovery?

18 MR. FISCHMAN: Your Honor, just one counsel issue just
19 to make the record complete. Mr. Hochbaum was appointed as CJA
20 counsel for David Miao. David Miao was found not to be
21 eligible for CJA counsel, so Mr. Hochbaum was instructed to
22 appear today. It is my understanding he has since been
23 retained. I wanted to bring that to your Honor's attention,
24 otherwise the docket sheet doesn't make a lot of sense.

25 MR. HOCHBAUM: That's correct, your Honor. I will be

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1 filing a notice of appearance.

2 THE COURT: Thank you very much.

3 Mr. Fischman, what will the discovery consist of in
4 this case?

5 MR. FISCHMAN: Yes, your Honor. The bulk of discovery
6 is going to be as follows. It will be asylum applications
7 filed by both the firm Moslemi & Associates and Bandrich &
8 Associates. It will be recordings that were made by
9 individuals working with the government. There are recordings
10 of all nine defendants that will be produced. I don't have a
11 precise number, but it is approximately I'd say about 50
12 recordings. They vary in length from a few minutes up to
13 substantially longer. Most of those recordings are in
14 Mandarin. The government has draft transcripts that are being
15 produced on a rolling basis, and we anticipate when we make
16 discovery, which I'll get to dates in a moment, that most of
17 the transcripts will be complete by then.

18 There are also certain documents that were provided by
19 the law firms to applicants in connection with their asylum
20 applications that we will be producing. There are search
21 warrants that were executed -- and this is I think the most
22 difficult part of the discovery. There were search warrants
23 executed at both law firms. The nine defendants worked at two
24 related law firms. 20 hard drives were seized. They've all
25 been imaged and the hard drives returned so as to minimize any

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1 interruption to business. However, the process of searching
2 the electronic data along with the hard data that was seized
3 with wall teams for privilege issues and with translation,
4 because we anticipate that almost all of the information is
5 going to be in Chinese, is going to take some time.

6 Against that backdrop, what the government would
7 propose is we will make an initial wave of discovery no later
8 than January 31. That will consist of all of the categories of
9 information that I mentioned, putting aside for a moment the
10 search warrant information, and perhaps there will be some
11 transcripts that need to be followed up on by that time. But
12 substantially it should be complete, the initial draft
13 transcripts. We will provide affidavits to the search warrant
14 by that time, and an initial production of whatever we have
15 from the search.

16 I think the question becomes then what makes -- if
17 that's acceptable -- what makes most sense going forward. What
18 the government would propose is making a second wave of
19 production in late February, and writing a letter to the Court
20 at that time to advise the Court of what progress we've made as
21 far as in particular the electronic discovery. And perhaps we
22 can set a conference date for early to mid March, which
23 hopefully we will be in a position for defense counsel to
24 intelligently advise on motions, with the caveat that I'm not
25 sure where we'll be as far as electronic discovery.

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1 THE COURT: Do any of the defendants have an objection
2 to that schedule?

3 MR. HOCHBAUM: No, your Honor.

4 MR. SOTTILE: James Sottile for Feng Ling Liu. No
5 objection to the schedule. We would at some point like to be
6 heard by the Court on the wall procedures that the U.S.
7 attorney's office proposes to follow with respect to review of
8 privileged materials. Obviously they've seized the entire hard
9 drives of two different law firms representing a wide variety
10 of clients going beyond the scope of the indictment. There are
11 serious privilege issues, and we only learned today about the
12 procedures they plan to follow, that there is a wall team to
13 review. And we would like to understand in some more detail
14 precisely what procedures they propose to follow, evaluate
15 whether those are satisfactory, and we may propose to the Court
16 the appointment of a special master to oversee the process.

17 THE COURT: Why don't we talk about scheduling first,
18 and I am going to turn to Mr. Fischman and ask him to elaborate
19 on those procedures.

20 MR. SOTTILE: Thank you, your Honor.

21 THE COURT: What I am going to do is I'm going to set
22 a conference for mid March.

23 THE DEPUTY CLERK: March 14 at 10:30 a.m.

24 THE COURT: Does that work for all counsel?

25 MR. FISCHMAN: That's fine for the government.

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1 MR. DRATEL: Yes, your Honor.

2 THE COURT: March 14. And at that time I'm going to
3 ask defense counsel if you intend to make any motions and set a
4 schedule, and we may set a trial date as well. Given how many
5 defendants are in this case I think it's prudent to do that
6 early. And so we'll deal with that on March 14.

7 MR. MAHER: Sean Maher. I am scheduled to be on trial
8 in front of Judge Pauley, it's going to be most of that month,
9 so I wanted to let your Honor know I may have someone stand in
10 for me that day.

11 THE COURT: That's fine. Thank you.

12 Mr. Fischman, do you want to elaborate on the
13 procedures?

14 MR. FISCHMAN: Your Honor, what I would propose to do
15 is no later than tomorrow as we get discovery rolling out to
16 the counsel, some of whom are new to the case, no later than
17 tomorrow we will send copies of the affidavits, to the extent
18 they don't already have them for each of the two search
19 warrants that were executed, which spell out in detail the wall
20 review procedure. And that will also I think put counsel in
21 the best position if they take issue with the procedure that's
22 spelled out therein to raise the issues and raise it sooner
23 than later. We'll do that no later than close of business
24 tomorrow.

25 THE COURT: Is that acceptable to all defense counsel?

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1 MR. SOTTILE: Certainly here, your Honor. Thank you.

2 THE COURT: Thank you.

3 MR. FISCHMAN: A couple of housekeeping matters that I
4 don't know your Honor's practice if you wanted to hear these
5 applications orally or in writing. There are two on-consent
6 bail modifications to be made. I'm happy to advise the Court
7 of those now, or again, we can put it in a letter. Whatever
8 your preferred practice is.

9 THE COURT: I would like it in a letter. I would like
10 to know if pretrial services consents as well.

11 MR. FISCHMAN: We'll include that information in the
12 letter.

13 THE COURT: Thank you.

14 MR. FISCHMAN: Okay. Other than a motion for time to
15 be excluded under the Speedy Trial Act, which I think is
16 automatic in any event, but so that the defense may review
17 discovery and contemplate motions, and the exclusion from today
18 until March 14, other than that there is nothing further from
19 the government.

20 THE COURT: Does anyone have an objection to that on
21 the defense side?

22 MR. DRATEL: No, your Honor.

23 THE COURT: I will exclude time from today until
24 March 14 pursuant to U.S.C. Section 3161(h)(7)(A). I find that
25 the ends of justice served outweigh the interests of the public

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1 and defendants in a speedy trial. Because it will permit time
2 for the production of discovery and review by defense counsel
3 and defendants as well.

4 Is there anything else we need to discuss today?

5 MR. FISCHMAN: Nothing from the government, your
6 Honor.

7 THE COURT: Thank you. Have a nice afternoon.

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